United Food and Commercial Workers Union, Local 540 (Campbell Soup (Texas), Inc.) *and* Robert Raper *and* James Latham. Cases 16–CB–3707 and 16–CB–3713

December 23, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On September 20, 1991, Administrative Law Judge Michael D. Stevenson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, United Food and Commercial Workers Union, Local 540, Paris, Texas, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] Member Raudabaugh did not participate in *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367 (1991), and *American Telephone & Telegraph Co.*, 303 NLRB 942 and 303 NLRB 944 (1991). He expresses no opinion about the merits of those decisions or about whether there are circumstances in which a union may lawfully enforce the payment of dues pursuant to a checkoff authorization even after an employee's resignation of union membership. He agrees with the judge, however, that *Steelworkers Local 4671* and *AT&T* are distinguishable from this case.

Timothy L. Watson, Esq., for the General Counsel.
James L. Hicks Jr., Esq., of Dallas, Texas, for the Respondent.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Paris, Texas, on March 12, 1991,[1] pursuant to a consolidated complaint issued by the Regional Director for the National Labor Relations Board for Region 16 on November 20, and which is based upon charges filed by Robert Raper (Case 16–CB–3707) and by James Latham (Case 16–CB–3713) (Charging Parties or Raper and Latham) on October 17 (Case 16–CB–3707) and on October 25 (Case 16–CB–3713). The complaint alleges that United Food and Commercial Workers Union, Local 540 (Respondent) has engaged in certain violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act (the Act).

[1] All dates herein refer to 1990 unless otherwise indicated.

Issue

Whether Respondent unlawfully refused to process the Charging Parties' resignations as requests to cease dues deductions.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel and Respondent.

On the entire record of the record, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE EMPLOYER'S BUSINESS

Respondent admits that the Employer, Campbell Soup (Texas), Inc., is a Texas corporation which is engaged in the manufacture of canned soup and has its principal place of business located in Paris, Texas. It further admits that during the past year, in the course and conduct of its business, the Employer purchased and received goods, materials, equipment, and supplies valued in excess of $50,000 at its Paris, Texas facility directly from points located outside the State of Texas. Accordingly, it admits, and I find that the Employer is engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

Since 1966 Respondent has maintained a collective-bargaining relationship with the Employer. The most recent labor agreement between the parties, effective between December 4, 1989, and December 8, 1991, is contained in the record (Jt. Exh. 1). Respondent represents approximately 1200 employees in the bargaining unit. Although Texas is a right-to-work state, union membership of unit employees runs about 90 percent.

Two former members of Respondent, Charles Raper and James Latham, testified for the General Counsel. Raper is a 5-year Campbell employee who currently works as a lab assistant on the third shift. Latham is a 2-1/2-year Campbell employee, who currently works in the label department. The former worked at Campbell for about 3 years before joining the Union on September 12, 1989 (Jt. Exh. 2). A little over a year later, Raper decided to resign from the Union. Allegedly, Raper sought advice from a company personnel official by the name of Tommy Jahn, who did not testify in this case. Jahn supposedly told Raper that he should submit a short letter to the Company and to the Union expressing his desire to resign from the Union. On October 4, Raper typed,

To whom it may concern:

Due to my dissatisfaction with the union I resign effective immediately.

Sincerely,
/s/ Robert Raper
clock number 11062
(Jt. Exh. 3)

According to Raper, Jahn had mentioned something about a required timeframe for submitting the resignation, but that Raper was within the timeframe.

Latham joined the Union on September 11, 1989 (Jt. Exh. 4). He too decided to resign from the Union, and was advised by his friend Raper on the proper procedure. On October 4, Raper typed a statement for Latham at the latter's request:

To whom it may concern:

I resign from the union effectively immediately.

Sincerely,
/s/ James Latham
clock number 11497
(Jt. Exh. 5)

Both purported resignations were duly delivered to Respondent's offices. Subsequent to delivery of the resignations, the Charging Parties' monthly union dues deductions of $14.35 each continued. To find out why, Raper made inquiry at the Employer's personnel office where he was told by Jahn that the Union had refused to cancel the dues deductions.

When Raper and Latham joined the Union, they executed dues-checkoff authorization forms, as part of the signed membership application. Pursuant to the checkoff authorizations, the Union was authorized to arrange with the Employer for automatic dues deductions directly from Raper's and Latham's paychecks. The checkoff authorization for both Charging Parties reads as follows:

UNITED FOOD AND COMMERCIAL WORKERS LOCAL UNION 540, AFL–CIO & CLC CHECK-OFF AUTHORIZATION

You are hereby authorized and directed to deduct from my wages, commencing with the next payroll period, all Union dues and initiation fees as shall be certified by Local 540 of the United Food and Commercial Workers International Union, AFL–CIO & CLC, and to remit same to the said Union.

This authorization and assignment shall be irrevocable for a period of one (1) year from the date of execution or until the termination date of the agreement between the Employer and Local 540, whichever occurs sooner, and from year to year thereafter, unless, not less than (30) days and not more than (45) days prior to the end of any subsequent yearly period I give the Employer and the Union written notice of revocation bearing my signature thereto.

The President of Local 540 is authorized to deposit this authorization with any employer under contract with Local 540 and is further authorized to transfer this authorization to any other Employer with Local 540 in the event I should change employment.

(Jt. Exhs. 2, 4)

As its only witness, Respondent called Gary Cunningham, Respondent's vice president and business representative. Essentially agreeing with the Charging Parties with respect to most facts, Cunningham disputed the ultimate conclusion that the resignations were valid. Instead, he testified that the resignations, to the extent they sought to cancel dues deductions, were untimely. To support this view, Cunningham provided certain background.

For example, Cunningham noted that the current collective-bargaining agreement (Jt. Exh. 1), as in the past, was ratified by majority vote of the members. Article two [union security] of the collective-bargaining agreement reads in pertinent part,

> The authorization shall be irrevocable for one year from the date of the authorization or the signing of a labor agreement between the Company and the Union and shall be irrevocable for each succeeding year or agreement period thereafter, unless the employee submits a notice of revocation in writing to both the Company and the Union during the fourteen (14) days preceding the anniversary date of signing the authorization or termination of the agreement.
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> (Jt. Exh. 1, Art. 2, par. C,3)

Although Respondent maintains contracts with a total of 27 different employers, Campbell is the only employer with a provision in the contract limiting members right to cancel the dues-checkoff authorization, where the provision differs from the dues-checkoff authorization itself.

In his testimony, Cunningham explained Respondent's policy where a resignation is considered untimely pursuant either to the dues-checkoff authorization or to the contract. As occurred in the instant case, Cunningham cancelled the Charging Parties' memberships, but not the dues-checkoff authorizations. Sometime in September 1991, the first applicable window period, and without the necessity of the Charging Parties having to write a second resignation letter, Respondent willl cancel the Charging Parties' dues-deduction checkoffs.

In conclusion, Cunningham testified that again in conformity with its standing policy, Respondent did not notify the Charging Parties of its policy or tell them why it believed their resignations were not effective to cancel the dues-deduction authorizations. The reason for this lack of notice is to encourage members who are thinking about resigning from the Union, to discuss the matter with union officials first to see if any problems could be resolved, rather than discussing the matter with company officials who are not necessarily interested in or capable of resolving members' problems.

B. *Analysis and Conclusions*

On March 29, 1991, a little over 2 weeks after the hearing of the instant case, the Board decided the case of *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*,

302 NLRB 322 (1991). Subsequently, the Board decided several additional cases on authority of *Lockheed*. See, e.g., *Teamsters Local 667 (American Freight)*, 302 NLRB 694 (1991); *Affiliated Food Stores*, 303 NLRB 40 (1991). Both the General Counsel and Respondent have included their views on briefs as to how *Lockheed* might or might not govern the issues in the present case. With *Lockheed* and its progeny in mind, I turn to discuss and decide the issues presented here.

I begin with one of the most recent Board decisions to utilize the *Lockheed* analysis, *Woodworkers (Weyerhauser Co.)*, 304 NLRB 100 (1991). There the Board stated as follows:

> In *Electrical Workers IBEW Local 2088 (Lockheed Space Operations)*, 302 NLRB 322 (1991), . . . the Board set forth a new test for determining the effect of an employee's resignation from union membership on that employee's dues-checkoff authorization. The Board in *Lockheed* found that an employee may voluntarily agree to continue paying dues pursuant to a checkoff authorization even after resignation of union membership. In fashioning a test to determine whether an employee has in fact agreed to do so, the Board took into account fundamental policies under the Act guaranteeing employees the right to refrain from belonging to and assisting a union, as well as the principle set forth by the Supreme Court that waiver of such statutory rights must be clear and unmistakable.[4] In order to give full effect to these fundamental labor policies the Board stated that it would:
>
> > construe language relating to a checkoff authorization's irrevocability—i.e., language specifying an irrevocable duration for either 1 year from the date of the authorization execution or on the expiration of the existing collective-bargaining agreement—as pertaining only to the *method* by which dues payments will be made *so long as dues payments are properly owing*. We shall not read it as, by itself, a promise to pay dues beyond the term in which an employee is liable for dues on some other basis. Explicit language within the checkoff authorization clearly setting forth an obligation to pay dues even in the absence of union membership will be required to establish that the employee has bound himself or herself to pay the dues even after resignation of membership. [Emphasis in original.]

[4] *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693, 708 (1983).

Applying the analysis of *Lockheed* to the instant case, I find that the dues-checkoff authorizations signed by the Charging Parties did not obligate them to pay dues after resignation from union membership. As in *Lockheed*, all that the Charging Parties here authorized was the deduction of ''initiation fees and monthly dues.'' They did not clearly authorize the continuation of this deduction after they had resigned from union membership. I therefore find that the resignations of Raper and Latham were sufficient to revoke their dues-checkoff authorizations, and that the Respondent violated Section 8(b)(1)(A) by continuing to receive and retain dues checked off from their wages after their resignations.

So there can be no confusion on this issue, I turn to another post-*Lockheed* case where the Board refused to find a violation. In *Steelworkers Local 4671 (National Oil Well)*, 302 NLRB 367, 368 (1991), the Board noted the following language from the dues-checkoff authorization:

> [P]lease deduct from my pay each month, while I am in employment with the collective bargaining unit in the Company, and *irrespective of my membership status in the Union*, monthly dues, assessments. [Emphasis added.]

This language, the Board held, was sufficient to show the employee's intent to authorize the continuation of his dues deduction even in the absence of union membership. Ibid. Accordingly, the complaint was dismissed. See also *American Telephone & Telegraph Co*., 303 NLRB 942 (1991) and 303 NLRB 944 (1991).

In its brief, Respondent contends that the facts and circumstances surrounding the instant case remove it from the coverage of *Lockheed*. More specifically, Respondent contends that the Charging Parties received a benefit from the checkoff authorization which demonstrates (clearly and unmistakably) a waiver of the Charging Parties' right to refrain from assisting a union by having dues deducted when the Charging Parties were no longer members of the Union. The benefit asserted by Respondent was the convenience afforded the Charging Parties by not having to pay their monthly dues themselves (Br. 2).

Notwithstanding the Board's alleged failure to decide this waiver argument in at least three pending cases in which Respondent's counsel claims to be involved (Br. 2), I have little difficulty in addressing and disposing of the argument. Both Raper and Latham credibly testified that they were not even aware that they could pay their dues themselves. I also note that the checkoff authorization is part of the Respondent's membership application. From these facts, I conclude that the primary benefit of automatic dues deduction inures to the Union. Any benefit to the member is so miniscule by comparison as to be insignificant. In any event, I find the so-called convenience factor does not meet the clear and unmistakable waiver standard of *Lockheed*.[2]

I note that in *Lockheed*, supra at 329 fn. 26, the Board left open the question of how it would construe a checkoff authorization for an employee whose dues obligation continued on other grounds after resignation, such as a valid union-security clause. In cases following *Lockheed*, where the employer is based in a so-called right-to-work state, as is the Employer here, the Board has held that such cases do not require the Board to decide how a lawful union-security clause might affect the Board's analysis with respect to revocation of dues-checkoff authorizations. See *Food & Commercial Workers Local 425 (Hudson Foods)*, 302 NLRB 346 fn. 5 (1991) (Arkansas); *Teamsters Local 845 (Stone Container Corp.)*, supra at 959 fn. 6 (Texas); *Southwestern Bell Tele-*

[2] Respondent also raises a statute-of-limitations defense based on Sec. 10(b) of the Act. Such argument is without merit as the 10(b) period began to run when the Charging Parties learned that Respondent refused to honor their October resignations from the Union as requests to cease dues deductions. *Teamsters Local 845 (Stone Container Corp.)*, supra, 302 NLRB 957, 959 fn. 7.

phone Co., 303 NLRB 87, 88 fn. 9 (1991) (Texas); *Affiliated Food Stores*, supra, 303 NLRB 40 fn. 6 (1991) (Texas).

The General Counsel argues that Respondent has also violated Section 8(b)(2) of the Act. In *Woodworkers (Weyerhauser Co.)*, supra, 304 NLRB at 101, the Board stated that in order to prove an 8(b)(2) violation, the General Counsel must allege and offer evidence that respondent engaged in an affirmative act to cause the employer to continue to deduct dues from an employee, postresignation.

To determine whether Respondent committed the requisite affirmative act, I turn to the record. According to Cunningham, Jahn called Cunningham after the Charging Parties had submitted their resignations. Without mentioning Raper and Latham, Jahn said he was calling about some employees who were resigning from the Union. Cunningham responded that resignations from the Union were not then timely to revoke the checkoff authorizations. This conversation occurred in mid to late October, or possibly after November dues were deducted. Cunningham admitted that after he conveyed to Jahn Respondent's position, the Employer continued the monthly dues deduction without interruption. I am satisfied that this evidence is adequate to show that Respondent violated Section 8(b)(2), and I so find. *Machinists Local 2045 (Eagle Signal)*, 268 NLRB 635, 636 (1984) (union advised employer of opposition to employees' revocations of checkoff).[3] See also *Food & Commercial Workers Local 455 (Gerland's Food)*, 302 NLRB 341, 343 (1991); compare *Auto Workers Local 788 (Martin Marietta Aerospace)*, 302 NLRB 431 (1991), and *Smithfield Packing Co*., 303 NLRB 546, 548 (1991).

CONCLUSIONS OF LAW

1. By receiving, accepting, and retaining membership dues withheld from the pay of Raper and Latham after their resignations from membership in the Respondent and by doing so solely on the authority of checkoff authorizations that did not clearly and explicitly provide for postresignation dues obligations, the Respondent Union has restrained and coerced employees in their exercise of Section 7 rights and violated Section 8(b)(1)(A) of the Act.

2. By causing the Employer, by virtue of a dues-checkoff authorization that does not clearly and explicitly impose any postresignation dues obligations on the employees, to deduct union membership dues from Raper's and Latham's wages after they had resigned union membership, Respondent Union has violated Section 8(b)(2) of the Act.

REMEDY

Having found that the Respondent has engaged in the unfair labor practices described above, I shall recommend that it be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent must give full force and effect to the Charging Parties' resignations and make them whole for all monies deducted from their wages following the dates of their resignations, October 4, 1990, with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Accordingly, upon the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, United Food and Commercial Workers Union, Local 540, Paris, Texas, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Receiving, accepting, and retaining monies withheld from wages as membership dues after employees have resigned membership in the Union, where such action is not taken in reliance on a union-security clause in effect in the collective-bargaining agreement governing the employees' terms and conditions of employment, and where the terms of the voluntarily executed checkoff authorization do not clearly and explicitly impose any postresignation dues obligation of the employees.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole, with interest, employees Robert Raper and James Latham for all monies deducted from their wages as union dues after the date of their resignation from union membership.

(b) Post at its Paris, Texas offices and, with permission, at the Employer's Paris, Texas facility, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 16, after being duly signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps it has taken to comply.

[3] The Board cited *Eagle Signal* with approval in its *Lockheed* decision, supra, 302 NLRB 322 at 330 (1991), indicating its continued vitality with respect to Sec. 8(b)(2).

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representative of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT receive, accept, or retain monies withheld from wages as membership dues by continuing to give effect to checkoff authorizations after an employee resigns union membership and no longer owes union dues.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make whole, with interest, employees Robert Raper and James Latham for all monies deducted from their wages as membership dues following their resignation from union membership.

UNITED FOOD & COMMERCIAL WORKERS UNION, LOCAL 540